

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 261 of 2016 (DB)

Shri Sachin Moreshwar Mahakalkar,
Aged about 30 years, Occ. Nil,
R/o Pragati Nagar, near Bina Apartment,
Bangali Camp, Chandrapur-442 401.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
- 2) The Director General of Police,
Maharashtra State, Mumbai.
- 3) The Superintendent of Police,
Chandrapur, Dist. Chandrapur.
- 4) Shri Manoj Ramkrishna Kuite,
Aged about 26 years, Occ. Not known,
R/o Chandrapur, Tah & Dist. Chandrapur.

Respondents.

S/Shri A.D. Hazare, P.J. Mehta, Advocates for the applicant.

Shri M.I. Khan, P.O. for respondent nos.1 to 3.

Shri B.D. Pandit, Advocate for respondent no.4.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 26th day of April,2019)

Heard Shri P.J. Mehta, learned counsel for the applicant, Shri M.I. Khan, learned P.O. for respondent nos. 1 to 3 and Shri B.D. Pandit, learned counsel for respondent no.4.

2. The applicant is son of retired Assistant Sub Inspector of Police. The respondent no.3 published the advertisement on 03/02/2016 and invited the applications for filling the posts of Police Constable in the establishment of the District Police Force, Chandrapur. 13 posts were reserved for OBC category, out of which 1 post was reserved for the ward of Police personnel. The applicant was fulfilling the other requirements and he was also ward of retired Assistant Police Sub Inspector, therefore, he applied for the post under category OBC reserved for the Police ward.

3. The applicant was called for the physical test wherein the applicant scored 76 marks out of 100. The respondent no.4 also applied for the post of the Police Constable under OBC category. The respondent no.4 scored 60 marks out of 100 in the physical test. As per the earlier decision the cut off marks were fixed to allow the candidate to appear in the written examination. So far as the police ward belonging to OBC, the cut off marks were fixed 68.

4. It is submitted by the learned counsel for the applicant that only to show grace and favour to the respondent no.4, unilaterally, modification was made in the cut off marks of category

police ward OBC and it was reduced to 60. It is submitted that taking advantage of this fact and modification the respondent no.4 was permitted to appear in the written examination. In the written examination, the applicant scored 66 marks and the respondent no.4 scored 86 marks. When the applicant noticed the select list he learnt that the respondent no.4 was selected as he obtained 146 marks and the applicant's name was not in the select list as he scored 142 marks.

5. The learned counsel for the applicant also submitted that the respondent no.4 did not apply for the post, reserved for the police ward OBC and in spite of it the respondent no.4 was selected in that category and therefore there is a illegality committed in appointing the respondent no.4.

6. The learned P.O. invited our attention to page no.90 of the record which is copy of the application submitted by the respondent no.4 in pursuance of the advertisement. On page no.91 there is copy of online application. On perusal of this application it seems that the respondent no.4 did not apply in any category reserved for the Sportsman/Home Guard/Project Affected Person/Earthquake Affected Person/Part Time Graduate/ Ward of Police Personnel. In that column it was mentioned by the respondent no.4 "None". It is submission of the applicant that when

the application submitted by the respondent no.4 was not for the post reserved for ward of police personnel reserved in OBC category, there was no propriety to select the respondent no.4 and appoint him on that post. It is submitted that if conduct of the respondent no.3 bringing down the cut off marks from 68 to 60 and considering the application of the respondent no.4 under the category reserved for police ward OBC is self sufficient to demonstrate that there was total unfairness in the examination and it was done only for selecting the respondent no.4 anyhow without following the rules. It is submitted that the selection of respondent no.4 is illegal and the respondent no.3 did not follow the terms and conditions in the advertisement.

7. It is contended that in the advertisement as per Clause 15 (10) it was cleared that the candidate shall not be entitled to make any change or alteration in the application and the relief of reservation if not claimed in the application, shall not be given to the candidate. It is contention of the applicant that the respondent no.3 breached the condition in Clause 15 (10) of the advertisement and therefore, the selection of the respondent no.4 is absolutely illegal.

8. We have heard the submissions of the learned P.O. and learned counsel appearing for the respondent no.4. Both have justified the action of the respondent no.3 alleging that the respondent no.4 is also ward of ex-police personnel and he applied

under that category, at the time of scrutiny, complaint was lodged by the respondent no.4 and it was considered by the Committee and the respondent no.4 was considered in the category reserved for police ward OBC. It is submitted that as the respondent no.4 scored more marks, therefore, there is no illegality. Secondly it is submitted that the Committee was empowered to reduce the cut off marks, it was a policy decision and the Tribunal cannot interfere in it.

9. The learned P.O. has placed reliance on the Judgment in case of **Union of India & Ors. Vs. S. Vinodh Kumar & Ors.,2008 (1) Mh.L.J.,358 (SC)**. It is submitted that it is for the employer or the expert body to determine the cut off marks and if the cut off marks are fixed on rational basis, there should not be judicial interference.

10. The learned P.O. has also placed reliance on the Judgment in case of **Buddhi Nath Chaudhary & Ors. Vs. Abahi Kumar & Ors. (2001) 3 SCC,328**. It is submitted that the candidate who has participated in the recruitment process cannot be permitted to challenge the same. It is also submitted that even if the appointment is improper if it is made long back, it should not be disturbed.

11. After perusal of the documents and the advertisement, we see merit in the contention of the applicant. As per Clause 15 (10) it was specifically warned that permission would not be given to make

any change in the application and if the reservation not claimed in a category, the same cannot be given at a later stage. In this background, we have perused the online application submitted by the respondent no.4. It is at P.B. page no.91.

12. After reading the on line application submitted by the respondent no.4, we have already discussed that the respondent no.4 did not claim any reservation under the category ward of police personnel, this column was answered "None". Thus it is clear that the respondent no.4 when submitted the application in pursuance of the advertisement, did not apply under the category reserved for the police personnel ward OBC. Consequently, there was no question to consider his application in that category. It is not a case that in the application the respondent no.4 had applied under a category reserved for police personnel ward OBC, but wrongly he was not considered in that category. Under these circumstances the exercise of the jurisdiction by the Committee, considering the respondent no.4 as a candidate belonging to category reserved for police personnel ward OBC was contrary to Clause no. 15 (10) of the advertisement and it was a material illegality.

13. Secondly once the cut off marks were fixed for police personnel ward OBC 68 marks, what was the propriety to reduce it to 60, no doubt the committee was empowered to fix the cut off marks

and it was done, therefore, the committee was bound to record special reasons why it was necessary to reduce the cut off marks. It is pertinent to note that only cut off of this category was reduced, it was all of sudden. When the first list of the candidates who were held eligible for the written examination was published, name of the respondent was not in the list, then cut off marks were reduced and name of the respondent no.4 was included, therefore, there is a force in the contention of the applicant that as the respondent no.4 did not score 68 marks or more, therefore, in order to make him eligible to appear in the written examination, the cut off marks were reduced down from 68 to 60 and consequently the respondent no.4 was permitted to appear in the written test and lateron he was selected though he did not apply for the post reserved for police ward. In this background, we would like to point out that there is a malpractice by the recruitment agency and if it is neglected by the Tribunal, then public will lose the confidence, normally the Court or Tribunal should not disturb the selection if it is made long back, but when there is a fraud committed by the public body, then it is duty of the Court or the Tribunal to interfere in the matter. In view of this, we are unable to accept the submission on behalf of the learned P.O. that appointment of the respondent no.4 should not be disturbed.

14. In this background, we would like to point out that when the O.A. was presented the interim order was passed on 29/04/2016.

It was noticed that the respondent no.4's name was not in the list of the candidates who were eligible to appear in the written test and considering all these aspects interim order was passed and permission was given to the respondent no.3 to appoint respondent no.4 with understanding that his appointment was subject to the final decision which will be passed in this O.A.

15. In view of these facts, we are of the firm opinion that the applicant is entitled for the reliefs claimed in this application. In the result, the following order –

ORDER

The O.A. is allowed in terms of Prayer Clause Nos.(1),(2) and (3). No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 26/04/2019.

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